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March 16, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 92-297
RM-7872; RM-7722

Dear Ms. Searcy:

Transmitted herewith on behalf of Telephone and Data System, Inc. are an original and nine copies of its Comments in the above-captioned proceeding.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

George Y. Wheeler

Enclosure

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Rulemaking to Amend Part 1 and	)	
and Part 21 of the Commission's	)	
Rules to Redesignate the 27.5 -	)	CC Docket No. 92-297
29.5 GHz Frequency Band and to	)	
Establish Rules and Policies for	)	RM-7872; RM-7722
Local Multipoint Distribution	)	
Service	)	

TO: The Commission

COMMENTS OF
TELEPHONE AND DATA SYSTEMS, INC.

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Its Attorneys

March 16, 1993

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SUMMARY

Telephone and Data Systems, Inc. ("TDS") supports the proposed redesignation of the 28 GHz band for Local Multipoint Distribution Service ("LMDS") and the adoption of licensing and regulatory policies which recognize the "public" and "local" character of the anticipated uses of 28 GHz technologies and the important role of the LEC industry in making the benefits of the new 28 GHz technologies widely available.

We strongly support adoption of MSA/RSA service area boundaries in the interest of preserving the "local" character of LMDS. Adopting "local" MSA/RSA areas will help foster diverse approaches to service design, numerous opportunities to participate in the new 28 GHz industry and the involvement of locally oriented businesses. Unlike Basic Trading Areas, MSA/RSA areas also will help promote rapid development of these new technologies, particularly in rural and sparsely populated areas.

The Commission should also recognize the predominant "public" character of the uses of 28 GHz technologies by giving LMDS a common carrier classification subject to a service-by-service review of offerings which might be classified otherwise. It is also essential that the Commission not inhibit or preclude the important regulatory oversight of state and local authorities.

Finally, we strongly support Commission use of rapid, efficient and cost-effective lottery selection procedures. The Commission's proposed anti-speculation measures should be adopted, subject to two modifications outlined in our Comments.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Establish Rules and Policies for	)	RM-7872; RM-7722
Local Multipoint Distribution	)	
Service	)	

TO: The Commission

COMMENTS OF
TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys submits its comments in response to the Commission's Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration released January 8, 1993 in the above-captioned proceeding ("LMDS NPRM").

INTRODUCTION

As a provider of telephone, cellular and paging services, TDS has actively supported the early development and implementation of emerging technologies which promise to improve and expand the broad range of services which it offers to its customers. TDS has expanded the scope and quality of the telecommunications services available in the areas which it serves by adopting "state of the art" technologies in many important facets of its

operations. Its telephone exchange facilities, which are primarily located in rural areas, small towns and some suburban communities include digital switching and digital transmission systems. TDS was also one of the earliest innovators of radio paging constructing one of the first paging systems to provide digital display paging. American Paging, Inc., a TDS subsidiary, was the first carrier to use satellite interconnection for a statewide paging network. U.S. Cellular, TDS's cellular subsidiary, has built over four hundred and twenty new cellular base stations in thirty-two states during the past seven years. Its subsidiary, American Portable Telecommunications, Inc., pioneered the development of innovative, affordable, universal PCS service offerings in an ongoing developmental test program in Orlando, Florida.[1]

As a company actively interested in developing new subscriber-based telecommunications service capabilities, TDS supports allocation of spectrum in the 28 GHz band to expand subscriber options to obtain video, data and voice services as described in the Commission's 28 GHz NPRM. The preliminary information presented in the Commission's LMDS NPRM suggests that 28 GHz technologies will make possible valuable new services as well as cost-effective alternative distribution capacity to supplement or replace existing technologies for established services.

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[1] Pioneer Preference File No. 7.

We also share the Commission's concerns that additional information about the operating characteristics of the 28 GHz technologies should be provided by Suite 12 Group and other experts in this field. We encourage Suite 12 Group and others who have operating experience with 28 GHz technologies, particularly in the rendition of video, data and voice services, to share that experience on the record so that the Commission can make its decisions based upon propagation, capacity, reliability, quality, cost and other relevant characteristics of these new technologies and so that other parties can make constructive comments as well.

We believe the four core "values" adopted by the Commission to guide its decisionmaking in its PCS Rulemaking proceeding[2] should guide the Commission's decisionmaking here. We present a series of recommendations for the licensing of 28 GHz technologies which are intended to support the availability of innovative services, rapid and universal deployment of 28 GHz technologies and a competitive marketplace for video, data and voice services.

We recommend that:

(a) The LEC industry should have a full and fair opportunity to integrate 28 GHz technologies into their existing operations.

(b) The service areas for 28 GHz systems should be defined as "local" service areas corresponding to MSA/RSA boundaries;

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[2] See the Commission's Notice of Proposed Rulemaking and Tentative Decision released August 14, 1992 in GEN Dkt. No. 90-314/ET Dkt. No. 92-100.

(c) All services provided via 28 GHz technology should be classified as common carrier subject to service-by-service review to establish whether specific services should be classified otherwise;

(d) The Commission should recognize and support the unique role of state and local regulatory oversight with respect to services provided via 28 GHz technologies; and

(e) Lottery selection procedures should be used, subject to stringent requirements to deter the filing of applications by speculators.

These and other aspects of the Commission's proposals are discussed in the following sections of these comments.

DISCUSSION

(1) The LEC Industry Should Have A Full And Fair Opportunity To Integrate 28 GHz Technologies Into Their Existing Operations.

We support the Commission's tentative policy conclusion that cross-ownership restrictions should not be imposed to exclude existing telecommunications firms such as local exchange carriers ("LECs") from constructing and operating 28 GHz technologies. LECs like many other operators of existing telecommunications facilities should have a full and fair opportunity to implement 28 GHz technologies in their existing operations. The public benefits of LEC involvement in the deployment of these technologies include early deployment, lowered costs, reduced market risks and ubiquitous coverage. LEC involvement could be particularly significant in rural areas and small communities where LECs are uniquely positioned to build and operate LMDS systems because

of their knowledge of local market needs, human and financial resources, and established technical qualifications.

We also agree with the Commission that the uses of 28 GHz technologies potentially include a broad range of video, voice, data and possibly other uses. With such a variety of uses, the Commission's tentative conclusion not to impose cross-ownership limitations is clearly appropriate.

We also believe that classifying all LMDS services as common carrier services (subject to service-by-service determination of specific uses which can be provided on a non-common carrier basis) provides an effective regulatory structure to implement the "intent of Congress" as applied to specific uses of 28 GHz technologies. LECs should be permitted to offer channel capacity on a non-common carrier basis as a wireless cable service (or some component functionalities thereof), unless prohibited by law. LECs should also be permitted to offer 28 GHz capacity on a common carrier basis to program packagers who intend to use that capacity for wireless cable services. Our proposals for common carrier classification of LMDS services are described in Section 3 of these Comments.

(2) Licensing of 28 GHz Technology Should Be Based Upon "Local" MSA/RSA Service Area Boundaries.

We support adoption of a service area design using the 734 metropolitan statistical areas ("MSA") and rural service areas

metropolitan statistical areas ("RSA").[3] These are established and well understood geographic descriptions of "communities of interest".

The established MSA/RSA boundaries which we support have provided a workable basis for successfully launching the cellular industry and more recently to define markets for the new interactive video/data ("IVDS") service. Over 60% of the commenters in the Commission's PCS proceeding supported use of MSA/RSA service areas for the launch of the important new PCS technologies. The proposed uses of 28 GHz technologies to support interconnection of PCS microcell base stations suggests that a similar service area approach should be adopted here.

MSA/RSA service areas also approximate actual patterns of cable industry ownership and operation more closely than Basic Trading Areas ("BTAs") or any of the other proposals described in the Commission's LMDS NPRM. For example, the Washington, D.C. BTA (No. 461) includes the District of Columbia plus six counties in Maryland and seven counties in Virginia and one county in West Virginia. As members of the Commission staff well know, this vast area cannot realistically be characterized as a single "community of interest". Cable ownership and control in the Washington. D.C. BTA, is fragmented, largely along political boundaries. Public access, government access, the mix of entertainment and non-entertainment programming available on each

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[3] See FCC Public Notice "Cellular MSA/RSA Markets and Counties," (Report No. 92-40), January 24, 1992.

system, the rates for cable service, all reflect the unique characteristics of each "local" cable franchise area. Cable in this sense is very much a "local" service, not a regional service. While it is also true that MSA/RSA boundaries substantially exceed typical cable industry clustering patterns, we believe that they approximate the dimensions of typical cable industry clustering more closely than any of the other alternatives in the Commission's LMDS NPRM.

We also support MSA/RSA boundaries as the only selection among the Commission's alternatives which creates appropriate incentives for the rapid and universal deployment of 28 GHz technologies. Use of BTA service areas would inhibit such deployment because they are geographically so large. Licensees attempting to serve BTA service areas would have strong incentives to build in densely populated urban core areas and either ignore thinly populated areas or postpone expansion into such areas until service in urban core areas has matured.

We also support MSA/RSA service areas as an important incentive for the development of 28 GHz technologies in rural and underserved areas by establishing licensing opportunities for applicants who will be specifically committed to providing service in such areas. The need for special Commission attention to the early development of these technologies in rural areas includes promoting rural development, making sure that the benefits of innovative technologies are promptly introduced in rural areas, enhancing the quality of rural life, supporting the

needs of existing businesses located in rural areas and enhancing public safety in isolated areas through improved telecommunications. The holder of the license to serve a smaller MSA/RSA will be committed to constructing and operating in that area and thus can be expected to meet its commitments more rapidly than a licensee of a larger service area of which the rural component is a relatively small part.[4]

We also believe that the MSA/RSA service areas will increase the number of potential competitors and innovators in the new LMDS service, decrease capital costs of entry thereby promoting early deployment, facilitate the development of innovative niche services, and provide opportunities for operators with the intention, financial resources and expertise to develop services which meet varied local consumer demands. We believe that MSA/RSA service areas are large enough to provide significant economies of scale and small enough to reflect the needs and interests of discrete communities of interest.

(3) All Services Provided Via 28 GHz Technology Should Be Classified As Common Carrier Subject To Service-By-Service Review To Establish Whether Specific Services Should Be Classified Otherwise.

We believe that diverse capabilities of 28 GHz technologies confirm the "public" character of the projected uses for such

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[4] Under a BTA approach, the Commission's proposal to require "at least 90% of the population residing within the service area" to be served within three years could increase incentives for rapid development of LMDS capabilities in densely populated areas and for little or no service in lightly populated rural counties.

technologies. For existing service providers such as LECs, LMDS likely will supplement, and in some cases replace, components of common carrier local exchange operations. For others, LMDS will provide competitive entry opportunities to compete with established service providers such as cable companies, LECs, alternative access providers and others. The fact that such services will compete with or otherwise become integrated with established "local" video, voice and data networks underscores the need for a consistent regulatory service classification assuring the protection of basic consumer rights under common carriage principles. Particularly if, as the Commission projects, 28 GHz technologies will become an integral part of PCS networks and will be used to provide wireless local loop capacity for voice and data services, the basic rights of consumers to obtain reliable, affordable, high-quality services must be protected. Under common carrier standards for which there is a long history of federal, state and local regulatory oversight, these rights include just and reasonable rates, non-discrimination, special protections for the hearing and speech disabled, assured access for emergency preparedness and public safety communications and other important "public" undertakings.

We share the related public policy concerns expressed by the Pennsylvania Public Utilities Commission ("PaPUC") in the Commission's PCS proceedings that competitive voice and data network capabilities established under a non-common carrier classification could adversely impact quality, cost and availability of

essential public communications services. The PaPUC summarized the critical importance of preserving common carrier regulatory responsibilities as follows:

> PCS, if unregulated, could siphon off, in toto, LEC customers from low-cost, high return areas, and would wreak havoc on the established wirebased network. Thus, if PCS is not effectively managed, the LEC local loop network, containing various subsidies which provide universal telephone service, could be jeopardized. Therefore, the Commission believes that the classification of PCS service as common carrier service is crucial. [5]

The Comments of the California PUC in the same proceeding explain and underscore the same points stating that the "...nature of these communication services as common carriage does not change simply because they may be technologically provided on a wireless instead of a wireline basis."[6] These serious matters are very much at issue in the Commission's deliberations here considering that 28 GHz technologies clearly are intended to be universally deployed and to be widely used by the public to substitute for, as well as to supplement, established switched and non-switched video, voice and data services.

(4) The Commission Should Recognize And Support The Unique Role Of State And Local Regulatory Oversight With Respect To Services Provided Via 28 GHz Technologies

The Commission should classify LMDS generally as common carriage, leaving state jurisdiction of intrastate and local communications undisturbed. The limited uses of 28 GHz technolo-

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[5] See Comments of PaPUC, p. 11.

[6] See Comments of California PUC, p. 5.

gies which may qualify for non-common carrier classification should be resolved on a service-by-service basis.

The Commission should recognize and support the role of state and local regulatory oversight with respect to the provision of exchange-type operations. The use of 28 GHz technologies to provide local exchange services to the general public in competition with wireline local exchange telephone services is reasonably foreseeable, particularly in so far as these technologies are used to support PCS network operations. The Communications Act contains a clear denial of jurisdiction over intrastate communications in Section 2(b) of the Communications Act.

State commissions have a strong interest in assuring that universal local exchange services remain viable at reasonable prices within their boundaries. Competitive local exchange-type services will have a profound impact upon exchange service pricing and availability, telephone cost separations, investment incentives and infrastructure development. Recognition of the state and local impact of these matters and respect for the intent of Congress preclude preemption of state authority over intrastate services. Under the strict standards for preemption set by Louisiana PSC v. FCC, 476 U.S. 355 (1986), and subsequent cases, the record in this proceeding does not support Commission preemption of either state entry or rate regulation of common carrier LMDS.

(5) Lottery Selection Procedures Should Be Used, Subject To Stringent Requirements To Deter The Filing Of Applications By Speculators.

We support use of qualified lottery mechanisms such as those proposed by the Commission in its LMDS NPRM because they provide realistic opportunities for competitive entry for small businesses, local companies and entrepreneurs as well as for companies with large financial resources. A critical factor in our recommendation is the need to create realistic opportunities for a broad range of businesses to participate. Lotteries have proved to be rapid, efficient and cost effective.

In order to deter speculation, it is essential that the Commission adopt restrictions which require all applicants to demonstrate their legal, financial and other qualifications. The prohibition against settlements is an important step. "Letter perfect" application requirements, strict financial showings, requirements for rapid construction, and the one day filing window are all needed to deter speculation.

We believe the Commission's policies should be modified on two points, however. In the event a lottery winner is disqualified, the Commission should hold a subsequent lottery among the remaining participants in original lottery. We oppose the alternative approach of selecting a contingent winner as needlessly promoting litigation and delay. We also recommend that the Commission's anti-trafficking requirements be modified to permit transfer or sale of unbuilt LMDS licenses. While we support the strongest possible requirements to deter speculation,

we also recognize that applicants inevitably will be selected who are either unwilling or unable to construct and operate the systems which they have proposed. In the interest of promoting the earliest possible deployment of LMDS facilities, these applicants should be permitted to transfer their LMDS licenses at any time after system construction is authorized. Companies which are prepared to deploy LMDS systems quickly within the construction timetables established in the Commission's rules should be permitted to acquire these licenses.

CONCLUSION

The Commission has a unique opportunity to encourage the development of unused spectrum to provide valuable "local" video, voice and data services. Unlike other services where incumbent users will complicate and delay early deployment, 28 GHz technologies appear to be poised for prompt implementation. We support the adoption of licensing policies for the LMDS service supporting the "public" and "local" character of the anticipated uses of 28 GHz technologies and the broad involvement of the LEC industry in the early deployment of 28 GHz technologies. Adoption of MSA/RSA service areas and common carrier classification of services subject to appropriate state and local regulatory oversight are necessary to guide the development of LMDS so that the anticipated public benefits from 28 GHz technologies are achieved. It is also critical that strenuous anti-speculation policies be adopted to make possible prompt and efficient Commis-

sion processing of applications and early deployment of these promising new 28 GHz technologies.

Respectfully submitted

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By /s/ George Y. Wheeler
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March 16, 1993